CHEW CHEE BENG AND 2 OTHERS v. REX.

[App. Crim. Juris. (Willan, C.J.) September 20, 1947]
[Penang — Cr. Appeal No. 103 of 1947]

Criminal trial — Procedure to be adopted in assigning counsel where prisoners are jointly charged with a capital offence.

Where two or more accused were jointly charged with murder and the defences were such that they ought to have been, but were not, separately represented, a re-trial was ordered.

COURT OF APPEAL.

E. A. de Buriatte for the Appellants (Assigned).

C. Wylie (Crown Counsel) for the Respondent.

The judgment fully defines the practice as to the assignment of Counsel in such cases.

The judgment of the Court of Appeal was given by

Willan, C. J. : — In this case the three Appellants were jointly charged with murder and all three were convicted.

Prior to the trial, in accordance with the usual practice, Counsel was assigned to defend all three Appellants at their trial. Having read the depositions taken at the preliminary inquiry, Counsel informed the Assistant Registrar, Supreme Court, Penang, that in his opinion each Appellant should be separately represented by Counsel because of the clash of interests between them.

The Assistant Registrar referred this application to Crown Counsel, who was to prosecute at the trial, and he advised that the assignment of separate Counsel for each of the Appellants was unnecessary.

At the trial the one Counsel assigned to defend all three Appellants made no further application to the trial Judge on this matter, with the result that the trial proceeded and was concluded with one Counsel representing all three Appellants. In our opinion Counsel was wrong in not renewing his application in Court.

It is clear from the record that there was a clash of interests between the Appellants, in that the second Appellant had made a statement to a Magistrate accusing the third appellant of committing the murder, and the third Appellant had made a statement to a Magistrate in which he alleged that it was the first appellant who had accused him of committing the murder.

On the ground that the three Appellants should have been separately represented by Counsel at their joint trial we allowed this appeal and ordered a new trial.

The purpose of this judgment is to lay down the procedure which should be followed when applications such as the one in this case are made.

In the first instance we can see no reason why any such application should be referred to Crown Counsel.

In making any such application to the Registrar, or Assistant Registrar, Supreme Court, as the case may be, the one Counsel first assigned should state with some particularity the reasons why it is necessary that the persons committed for trial should be separately represented by Counsel. In the majority of cases, if the reasons are fully set out, the Registrar, or Assistant Registrar, will be able to accede to the application at once.

If the Registrar, or Assistant Registrar, has any real doubt he should refer the application for a decision to the Judge who is to preside at the trial.

If the application is refused by the Judge, Counsel, if he still believes that separate representation is necessary, should renew his application in Court at the commencement of the trial so that if it is again refused, and convictions are had, there will be on record for the Court of Appeal the reasons for the refusal of the application.

Appeal Allowed.

SEAH CHAY TEE v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Laville, J.) November 24, 1947]
[Johore Bahru — Cr. Appeal No. 30/47]

Offences against the Forces Proclamation (Proclamation 50) Section 5 (1) — Possession of Military goods — Necessity of showing that possession is effective and exclusive — Evidence of co-accused.

In this case the appellant was charged with three others with possession of military goods contrary to S. 5 (1) of Proclamation 50. The evidence was that the four accused were in a car, stopped by the police, in which were found 2 wheels and 12 coils, which were alleged to be military property. No attempt was made to prove that one or some or all of the accused had any control over or the power to dispose of the goods. The only evidence against the appellant was that of his co-accused.

Held, (1) that where possession imports criminality it must be proved that the possession is effective and exclusive, that is, that the person or persons charged have the control over and the disposition of the goods found with him or them and that no other persons have; (2) that the evidence of a co-accused against his fellow accused should be given even less weight than that awarded to the evidence of an accomplice and requires stronger corroboration; (3) that in this case there was no corroboration of the evidence of the co-accused by untainted evidence; (4) that in this case the prosecution had failed to make out a case against the accused and all of them should have been discharged at the close of the prosecution.